IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1245 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATHVARA KHODABHAI KANJIBHAI - Applicant(s)
Versus
PATEL SHAILESHBHAI SHAMBHUBHAI & 1 - Respondent(s)

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Appearance :
MR.RAJESH B SONI for Applicant(s) : 1,
None for Respondent(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/07/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner – original accused against whom a criminal complaint for the offence punishable under

Section 138 of the Negotiable Instrument Act is filed has prayed to quash and set aside the criminal case No. 3841 of 2003 pending before the learned JMFC, Mehsana. It is also further prayed to quash and set aside the order passed by the learned Principal Sessions Judge passed in Criminal Revision Application No.113 of 2006 dated 1.5.2007 and allow the application of the petitioner for obtaining opinion of handwriting expert in the interest of justice.

2. It is the contention on behalf of the petitioner that the evidence of the original complainant has been recorded and during the course of the evidence, the complainant has miserably failed to prove the legal debts. It is required to be noted that the petitioner is not disputing that there is no signature of the petitioner on the cheque, however, the only contention on behalf of the petitioner is that the said cheque was blank and the amount and name is written by the original complainant. When the trial has already begun and the petitioner is not disputing that

the cheque is not signed by the petitioner, it, prima facie, appears that the ingredients of Section 138 of the Negotiable Instrument Act are complied with and therefore, it is not proper at this stage to quash the complaint, more particularly, when the trial has already begun. So far as the order passed by the learned Principal Sessions Judge in Criminal Revision Application No. 113 of 2006 dated 1.5.2007 is concerned, it is an interlocutory order and it will be open for the petitioner to take all the contentions available to him under the law at the time of trial, however, no ground is made out to quash the complaint.

3. For the reasons stated above, this petition is required to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

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